Court No.2

Criminal Writ Petition No. 650 of 2002 (M/S)

Naik Pratap Singh ..... Petitioner

Versus

State of Uttaranchal and three others ..... Respondents

……

Hon'ble P.C. Verma, J.

Heard learned counsel for the petitioner and Senior Central Government Standing Counsel for Union of India.

This petition has been filed under Article 227 of the Constitution of India challenging the order dated 30.04.2001 passed by the Addl. Chief Judicial Magistrate/I Addl. Civil Judge, Roorkee, District-Hardwar, contained in Annexure – F to the writ petition, whereby he has transferred the proceedings for the court martial.

According to the learned counsel for the petitioner, the Delhi High Court had already stayed the Court martial. The learned Magistrate ought to have honoured the order passed by the Delhi High Court and the order of the Government of India under the seal of the President, which was totally ignored. Therefore, the order is liable to be quashed under Article 227 of the Constitution of India. The power conferred to the High Court under Article 227 of the Constitution is the superintendence over the subordinate courts and tribunals. The power to quash the order by issuing a writ is available under Article 226 of the Constitution. No doubt under the powers of superintendence any illegality can be directed to be corrected by the subordinate Court. The power of revision is conferred under Section 397 of the Code of Criminal Procedure to the Sessions Judge to satisfy himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such

inferior court.

In Shankar Ramchandra Abhyankar versus Krishnaji Dattatreya Bapa, reported in (1969) 2 SCC 74 it has been held by the apex court that,

> "revisional jurisdiction partakes the appellate jurisdiction of a superior court. The right of appeal is one of entering a superior court and invoking its aid and interposition to redress the error of the court below. Two things which are required to constitute appellate jurisdiction are: the existence of the relation of superior and inferior court and the power on the part of the former to review decisions of the later. When the aid of the High Court is invoked on the revisional side it is done because it is a superior court and it can interfere for the purpose of rectifying the error of the court below. Subject to limitations placed on the exercise of revisional jurisdiction, it remains a part of the general appellate jurisdiction of a superior court in a wider and larger sense."

In the case of Major S.S.Khanna versus Brig. F.J. Dhillon, reported in (1964) 4 SCR 409, the apex Court further held that,

> "when revisional jurisdiction is exercised in relation to a "case", it can also be exercised in relation to a part of a case. Hidyatullah, J. (as His Lordship then was), in his separate concurring opinion, compared the revisional jurisdiction of the High Court with the jurisdiction to issue a writ of certiorari and held that the revisional jurisdiction is clearly in the nature of a proceeding on a writ of certiorari though His Lordship also pointed out the essential differences between the two powers. However, his Lordship clearly opined that the revisional jurisdiction is conferred to keep the subordinate courts within the bounds of their jurisdiction and once a flaw of jurisdiction is found the High Court exercising revisional jurisdiction need not quash and remit as is the practice in English law under the writ of certiorari but can itself pass such order as it thinks fit.

In the case of Babulal Nagar versus Shree Synthetics Ltd., reported in 1984 Supp. SCC 128 the apex Court further held that,

> "once a jurisdiction is conferred to examine the propriety or impropriety of the order, the jurisdiction is wide. One meaning assigned to the expression "propriety" is "justice". A jurisdiction to examine the propriety of the order or decision carries with it the same jurisdiction as the original authority to come to a different conclusion on the said set of facts. If any other view is taken, the expression "propriety" would lose its significance."

Thus, the revisional jurisdiction conferred under Section 397of the Code of Criminal Procedure is wider than the jurisdiction conferred under Article 227 of the Constitution of India. The petitioner ought to have approached the Sessions Judge first. The Sessions Judge could examine the correctness, legality or propriety of the order passed by the Additional Chief Judicial Magistrate impugned in this writ petition on merit exercising the wider jurisdiction conferred on him under Section 397 of the Code of Criminal Procedure. Even then if the petitioner is aggrieved, he could approach to this Court under Article 227 of the Constitution of India.

Since the wider and effective statutory remedy is available to the petitioner under Section 397 of the Code of Criminal Procedure, therefore, I do not propose to entertain this petition.

The petition is dismissed in limine. No order as to costs.

06.09.2002 **(P.C. Verma, J.)**
P.Singh